IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8534 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANDIPSINH CHHAGANJI CHAVDA

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 8534 of 2003

MR BG JANI for Petitioner No. 1

MR ASHISH M DAGLI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 27/02/03 passed by the respondent Corporation, at

Annexure 'G' to the petition, whereby the services of the petitioner came to be terminated on medical grounds.

2.0 The short facts of the case are that the petitioner was appointed as a driver on 10/05/97 in Kalol Depot of Mehsana Division. Unfortunately, the petitioner suffered from Epilepsy and found that it would be difficult for him to discharge his duties as a driver. He made representation to respondent no.1 dated 07/08/02 requesting to re-categorise his cadre of driver by declaring him unfit and by putting him in the cadre of peon or helper.

2.1 In turn, respondent no.1 directed the Depot Manager to advise the petitioner to take appropriate medical treatment and resume duty on becoming fit with fitness certificate. Accordingly, the petitioner was examined by the Civil Surgeon and it was found that the petitioner was suffering from Epilepsy and was permanently unfit to discharge his duties as a driver.

2.2 Respondent no.1 gave Notice dated 17/12/02 that as the petitioner was found unfit to work as a driver, he would be discharged from the services as a driver. The petitioner made representation dated 04/01/03 requesting for re-categorisation as per the settled policy of the Corporation. Respondent no.1 instead of re-categorising the cadre of driver and without considering the specific opinion of the Civil Surgeon, issued order dated 27/02/03 terminating the services of the petitioner. Hence, this petition.

3.0 On 11/09/03, this Court (Coram : P. B. Majmudar, J.) relying upon the decision of the Apex Court in Narendra Kumar Chandla v. State of Haryana & ors. reported in A.I.R. 1995 SC 519 directed the respondent Corporation to re-categorise the petitioner latest by 25/09/03. But, the petitioner was reinstated on 29/03/04. Mr.B G Jani learned advocate for the petitioner has now restricted his prayer, in view of the fact that the petitioner has been reinstated. Therefore, the implementation of the termination order dated 27/02/03 is out of question.

4.0 After hearing the learned counsel for the parties and having gone through the averments made in the petition, I am of the opinion that if the following directions are issued, then it would meet the ends of justice. The respondent Corporation will continue the petitioner in service, in view of the order dated 11/09/03 and pursuant to which the order dated 29/03/04

was passed. The learned advocate for the petitioner produces order dated 29/03/04 it is taken on record.

4.1 The petitioner is entitled for re-categorization from the date on which he made the representation dated 07/08/02, as the petitioner had approached this Court by way of this petition and the respondent Corporation had not implemented the order dated 11/09/03, whereby it was directed to reinstate the petitioner latest by 25/09/03. Therefore, the petitioner is entitled for salary for the period from 25/09/03 to 31/03/04. The difference of salary will be paid to the petitioner within a period of four weeks from today and the services of the petitioner will be treated as continuous, as referred by the Divisional Controller, Mehsana of the respondent Corporation.

5.0 Therefore, the following directions are issued;

5.1 The respondent Corporation will not terminate the services of the petitioner on this ground except on the ground of proved misconduct.

5.2 The Pay of the petitioner will be protected as if he was in service on the date on which he suffered the aforesaid disability.

5.3 The arrears referred to here in above i.e. salary for the period from 25/09/03 to 31/03/04 will be paid to the petitioner within a period of four weeks from the date of receipt of this order.

5.4 The period of absence of the petitioner from duty will be treated as continuous for all purposes. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. Jhaveri, J.)

pravin/